

Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253
Ex Parte Communication via Electronic Submission

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC

Re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, WT Docket No. 17-79 (includes Notice of Proposed Rulemaking)

Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities Siting Policies, WT Docket No. 16-421

Public Notice of Draft Program Comment Addressing Collocation on Twilight Towers, WT Docket No. 17-79

February 7, 2018

Dear Ms. Dortch,

The Nez Perce Tribe (Tribe) is located in North-Central Idaho, Idaho, with aboriginal territory in Idaho, Montana, Oregon, and Washington. The Tribe has occupied this 15 million acre homeland since time immemorial, and is recognized by the United States as a sovereign nation in the *Treaty with the Nez Percés, 1855*. The Tribe works with a variety of federal, state, and local agencies on small and large projects in the compliance of federal state, and local laws, including but not limited to, the National Historic Preservation Act (NHPA), National Environmental Policy Act (NEPA), and the Native American Graves Protection and Repatriation Act (NAGPRA). Our Tribe protects irreplaceable sites and locations that are of religious and cultural significance to our people today by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Tribe appreciates the opportunity to comment on the Federal Communications Commission (FCC) January 16, 2018 announcement and invitation to Indian Tribes and Native Hawaiian organizations (NHOs) to participate in conference calls on January 22 and 24 and February 5 regarding co-location on certain towers. The FCC refers to these conference calls as a continuation of "...the process of government-to-government consultation on certain issues raised in the NPRM." The Nez Perce Tribe does not agree that the FCC offering open meetings to tribal representatives, including offering unstructured conference calls on short notice, constitute government-to-government consultation. Nor does mass email messages to hundreds of tribal representatives for a conference call, the first of which is less than one week away constitute government-to-government either. The Nez Perce Tribe has participated in these calls for informational purposes only, and does not recognize them as formal consultation.

The FCC proposes to facilitate co-locations by excluding Twilight Towers, those constructed between March 16, 2001, and March 7, 2005, without compliance under the NHPA, from meaningful NHPA review before the towers are used for co-location. As part of the justification for this decision, the FCC notes that there has been a "decade of debate over the best approach for Twilight Towers FCC has been reviewing." The FCC also reiterates its determination that industry acted in good faith in erecting these towers without review, and that the agency will not take any enforcement action or impose any penalties for this deployment.

Unfortunately, this proposed exemption ignores the many ideas and suggestions made by Tribes, State Historic Preservation Officers, the Advisory Council on Historic Preservation, and others that would accommodate the needs of the wireless industry and consumers while also addressing the damage that some Twilight Towers have caused to historic properties, as well as traditional cultural properties and sacred sites. It is the position of Tribal Nations, THPOs, and SHPOs that existing twilight towers should be reviewed before co-locations are allowed, but the FCC does not seem to recognize the validity of this position. This is unfortunate, because the Tribe welcomes co-location on existing towers, as long as those towers can be demonstrated to not effect historic properties, or the adverse effects of such towers have been mitigated.

It is difficult to believe the FCC's assertions that few twilight towers are causing adverse effect, and that the FCC has received few notifications about damage caused by existing towers. Contrary to claims that cell towers rarely impact historic properties, the Nez Perce Tribe has identified numerous existing communication towers that were built on traditional cultural properties recognized as historic properties without consultation. Examples of this include Cottonwood Butte and Pilot Knob in Idaho. The Tribe has worked diligently with the wireless industry to mitigate for existing or replacement towers and co-locations on traditional cultural properties such as Mason Butte (Talmaks) in Idaho and Steptoe Butte in Washington State, or newly proposed towers, such as at Kamiak Butte in Washington State.

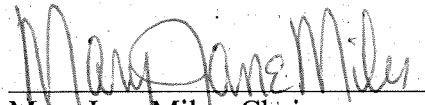
Unfortunately, because the FCC and industry refuse to provide the locations of twilight towers to consulting parties, it will be extremely difficult to determine if problem towers are also twilight towers. The FCC also does not have a defined process for notifying the agency about problem towers, which makes it difficult to submit these in a systematic way. Tribal people know of many problematic towers on historic properties and sacred sites, but that knowledge alone rarely provides enough information to determine how to resolve the problem.

This suggests that the FCC believes that the affected community is responsible for raising these concerns, and not the federal agency required to be in compliance with Section 106 of NHPA.

The Nez Perce Tribe also urges the FCC to continue to include co-locations on the Tower Construction Notification System (TCNS) system. This database has proven to be a very useful tool to track, monitor, and expedite the placement of cellular technology infrastructure. Although the new rule makes provisions for resolving adverse effects created by problem towers, these towers are not readily identified unless there is a specific federal action to review or require companies to notify tribes that a tower exists and the identity of its owner.

We do not believe that twilight tower owners/renters should be given a free pass, when there has been no determination of adverse affects. The phrase "streamlined process" seems to be targeted at tribal cultural review, so we do not believe any streamlined process should be developed without consultation and careful consideration by Indian Tribes.

The Tribe requests the Commission conduct direct, government-go-government consultation with the Tribe to discuss the concerns of the Tribe and the impacts of this effort to streamline the cell tower infrastructure process.



Mary Jane Miles, Chairman
Nez Perce Tribal Executive Committee
P.O. Box 365
Lapwai, ID 83540
(208) 843-2253

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Date